PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: ST9-99-134US3/A8644

Lynh NGUYEN

Appln. No.: 09/750,475

Group Art Unit: 2152

Confirmation No.: 7832

Examiner: Dohm CHANKONG

Filed: December 28, 2000

For: DATA SOURCE INTERFACE ENHANCED ERROR RECOVERY

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

Table of Contents

I.   REAL PARTY IN INTEREST

The real party in interest in the appeal is International Business Machines, Corporation

("IBM") of Armonk, New York, the assignee.

II.   RELATED APPEALS AND INTERFERENCES

A Pre-Appeal Brief Request for Review for the present application was filed on February 14, 2007. In the Notice of Panel Decision from Pre-Appeal Brief Review dated April 11, 2007, the Panel determined that, after a Pre-Appeal Brief conference, claims 1-19 maintain rejected, therefore the Appeal should proceed to the Board of Patent Appeals and Interferences. The Panel seems to have referred to the Office Action Summary of the Final Office Action dated November 14, 2007 in maintaining claims 1-19 as rejected. Although the Examiner rejected claims 20-22 in the mentioned Final Office Action, the Examiner neglected to address the claims in the Office Action Summary. Appellant believes that the Panel intended to maintain claims 1-22 as rejected and on appeal.

To the best of the knowledge and belief of Appellant, Appellant's legal representatives, and the Assignee, there are no other appeals or interferences that will directly affect or be affected by the Board's decision in the present Appeal.

III. STATUS OF CLAIMS

Claims 1-22 are the claims pending in the present application and stand finally rejected. Claims 1-22 are the claims on appeal herein.

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi et al. (U.S. Publication 2002/0023158, hereinafter "Polizzi") in view of Guenthner et al. (U.S. Patent 5,134,588, hereinafter "Guenthner").

Claims 1-5, 8-12 and 15-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi in view of Mastors et al. (U.S. Patent 5,826,021, hereinafter "Mastors").

Claims 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi and Guenthner in view of Brendel et al., (U.S. Patent 5,774,660, hereinafter "Brendel").

A copy of the claims on appeal is set forth in the attached Appendix.

IV.   STATUS OF AMENDMENTS

Amendments to the claims were submitted in an Amendment Under 37 C.F.R. § 1.114(c) filed November 22, 2005 in response to the Office Action dated August 22, 2005. A Response Under 37 C.F.R. § 1.116 was filed June 5, 2006, in response to the Final Office Action dated February 3, 2006. A Response Under 37 C.F.R. § 1.111 was filed September 7, 2006, in response to the Non-Final Office Action dated June 22, 2006. A Response Under 37 C.F.R. § 1.116 was filed January 12, 2007, in response to the Final Office Action dated November 14, 2006. In an Advisory Action dated January 29, 2007, the Examiner states that the Response filed January 12, 2007, has been considered but did not place the application in a condition for allowance. All amendments are believed to have been previously entered and made of record.

V.   SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellant's invention as recited in, for example, independent claims 1, 8, and 15, is related to a method, computer readable medium, and system for automatically re-establishing a connection to a data source accessible by a plurality of remote applications.

Claim 1

A method for automatically re-establishing a connection to a data source (see FIG. 7, data source 210) accessible by a plurality of remote applications (see FIG. 7, browser 202), the method comprising providing at least one interface module configured to interface with a remote application (see FIG. 7, interface module 208, browser 202; page 12, line 21 to page 13, line 6), providing at least one port module configured to interface between the interface module and the data source (see FIG. 7, port module 222, data source 210; page 13, 20-24), providing a connection manager to facilitate the interface between the interface module and the port module (see FIG. 7, connection manager 220; page 13, lines 14-20), detecting unavailability of the data source in response to an initial request for the data source by the remote application (see page 21, lines 7-13), dynamically detecting availability of the data source in response to a subsequent request for the data source (see page 21, lines 13-23), and re-connecting the data source to the remote application in response to the subsequent request (see page 21, lines 13-23).

Claim 8

A computer readable medium having stored thereon computer executable instructions for performing a method for connecting a plurality of remote applications with a data source (see page 8, lines 14-18), the method comprising providing at least one interface module configured to interface with a remote application (see FIG. 7, interface module 208, browser 202; page 12, line 21 to page 13, line 6), providing at least one port module to interface between the interface module and the data source (see FIG. 7, port module 222, data source 210; page 13, 20-24), providing a connection manager to facilitate the interface between the interface module and the port module (see FIG. 7, connection manager 220; page 13, lines 14-20), detecting unavailability of the data source in response to an initial request for the data source by the remote application (see page 21, lines 7-13), dynamically detecting availability of the data source in response to a subsequent request for the data source (see page 21, lines 13-23), and re-connecting the data source to the remote application in response to the subsequent request (see page 21, lines 13-23).

Claim 15

A system for connecting a plurality of remote applications with a data source (see FIG. 7), the system comprising an interface module (see FIG. 7, interface module 208) configured to interface with a remote application (see FIG. 7, browser 202), a port module (see FIG. 7, port module 222) configured to interface between the interface module and the data source (see FIG. 7, data source 210), and a connection manager module (see FIG. 7, connection manager 220) configured to facilitate an interface between the interface module and the port module, wherein

one of the port module and the connection manager module are further configured to detect

unavailability of the data source in response to an initial request for the data source by the remote

application (see page 21, lines 7-13), to dynamically detect availability of the data source in

response to a subsequent request for the data source (see page 21, lines 13-23), and to re-connect

the data source to the remote application in response to the subsequent request (see page 21, lines

13-23).

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-19 are unpatentable under 35 U.S.C. § 103(a) over Polizzi in view of Guenthner.

2. Whether claims 1-5, 8-12 and 15-19 are unpatentable under 35 U.S.C. § 103(a) over Polizzi in view of Mastors.

3. Whether claims 20-22 are unpatentable under 35 U.S.C. § 103(a) over Polizzi and Guenthner in view of Brendel.

VII.   ARGUMENT

1. Claims 1-19 are patentable under 35 U.S.C. § 103(a) over Polizzi in view of Guenthner

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi in view of Guenthner. This rejection is set out in detail in the Office Action dated June 22, 2006. Applicant respectfully submits that the claimed invention would not have been rendered obvious in view of the combinations of the cited prior art.

With respect to independent claim 1, the Examiner takes the position that Polizzi discloses many of the features recited in claim 1, but admits that Polizzi fails to teach or suggest "...detecting unavailability of the data source in response to an initial request for the data source by the remote application...dynamically detecting availability of the data source in response to a subsequent request for the data source and re-connecting the data source to the remote application in response to the subsequent request" as required by claim 1.

In the Advisory Action of January 29, 2007, the Examiner maintains the rejections, responding to the response to the Final Office Action that Guenthner does not teach dynamically detecting availability of the data source in response to a subsequent request for the resource. The Examiner asserts that Guenthner's disclosure at col. 9, lines 29-35 teaches this claimed featured. Applicant respectfully disagrees. That portion of Guenthner essentially discloses that if a browser detects a server's failure to reply to a request, the browser marks that server as "Bad" on a list of primary/backup servers. It then tries to send the request to another server on the primary/backup list of servers. Guenthner discloses that "a client retries entries that were

marked 'Bad' at a fairly frequent interval (at least once an hour) (so long as the client is still

making requests, of course)."

The Final Office Action, however, glosses over limitations in the claim. Claim 1, for

example, requires:

> "detecting unavailability of the data source in response to an initial request for the data source by the remote application;
> dynamically detecting availability of the data source in response to a subsequent request for the data source; and
> re-connecting the data source to the remote application in response to the subsequent request."

Guenthner does not disclose dynamically detecting the availability of a data source in

response to a subsequent request for the data source, as recited in claim 1. Rather, Guenthner

discloses retrying an entry marked as "Bad" "at a fairly frequent interval (at least once an hour)."

Hence, Guenthner retries a server based on a specific time interval (once an hour) and not in

response to a subsequent request as required by the claim. Even if Guenthner's statement of the

retries being made "so long as the client is making requests" is deemed to disclose sending the

retries "in response to a subsequent request," since Guenthner does not disclose that those retries

are for "the data source," namely, the same data source to which the initial request was sent,

Guenthner does not teach the limitation. Guenthner merely states that retries are sent once an

hour if "the client is making requests," without specifying to which servers those requests are

directed.

Independent claims 8 and 15 recite one or more features analogous with those discussed

above with respect to claim 1. Specifically, claims 8 and 15 recite detecting unavailability of the

11

data source in response to an initial request for the data source by the remote application,

dynamically detecting availability of the data source in response to a subsequent request for the

data source, and re-connecting the data source to the remote application in response to the

subsequent request. Accordingly, Guenthner fails to address the deficiencies of Polizzi with

respect to independent claims 8 and 15 in addition to independent claim 1.

Claims 2-7, 9-14, and 16-19 are patentable *at least* by virtue of their dependency from

one of the independent claims discussed above.

2. Claims 1-5, 8-12, and 15-19 are patentable under 35 U.S.C. § 103(a) over Polizzi in view of Mastors

Claims 1-5, 8-12 and 15-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable

over Polizzi in view of Mastors. This rejection is set out in detail in the Office Action dated June

22, 2006. Applicant respectfully submits that the claimed invention would not have been

rendered obvious in view of the combinations of the cited prior art.

As discussed above, Polizzi is relied on for teaching all the limitations of the independent

claims except for disclosing the detection of the unavailability and availability of a data source in

response to a request and reconnecting to the data source when it becomes available. Mastors is

cited for teaching this feature missing from Polizzi.

Like Guenthner discussed above, Mastors fails to teach or suggest the claim limitation of

"dynamically detecting availability of the data source in response to a subsequent request for the

data source; and re-connecting the data source to the remote application in response to the

subsequent request." In the portions of Mastors the Examiner relies upon (col. 6, lines 18-26 and col. 6, line 64 to col. 7, line 4), Mastors merely discloses writing data to a file at a client if the server is unavailable (col. 6, lines 22-23) and detecting "a reconnect condition between the client and server" (col. 6, lines 66-67). However, these portions of Mastors do not teach or suggest the claimed limitation of "dynamically detecting availability of the data source in response to a subsequent request for the data source," since Mastors merely describes detecting a reconnect condition without disclosing or suggesting that such detection is in response to a subsequent request for a data source, as required by the claims. Accordingly, even if Polizzi were modified based on Mastors the combination would not satisfy all the claim limitations.

Claims 2-5, 9-12, and 16-19 are patentable *at least* by virtue of their dependency from one of the independent claims discussed above.

3. Claims 20-22 are patentable under 35 U.S.C. § 103(a) over Polizzi and Guenthner in view of Brendel

Claims 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi and Guenthner in view of Brendel. This rejection is set out in detail in the Office Action dated June 22, 2006.

Claims 20-22 are patentable *at least* by virtue of their dependency from one of the independent claims discussed above and for the following reasons.

The Examiner acknowledges that Polizzi fails to teach or suggest "connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications" as recited in claims 20-22. The Examiner instead relies on Brendel to disclose this feature.

Brendel discloses data transmitted back to client browsers bypassing a load-balancer. However, Brendel maintains that incoming traffic is routed through the load balance. Applicant notes that claim 20 is dependent on claim 1. Accordingly, the subsequent communications recited in claim 20 include the communications claimed in claim 1. Claim 1 recites, *inter alia*, "dynamically detecting availability of the data source in response to a subsequent request for the data source". The claimed "subsequent request for a data source" is a subsequent communication but is incoming traffic and is **not** transmitted back to a remote application. The scope of claim 20 includes subsequent incoming communications in addition to other subsequent communications. As such, Brendel does not teach or suggest connecting directly the interface module and the port

module for communicating independently from the connection manager in subsequent

communications as claimed.

Guenthner fails to address the above noted deficiencies with respect to Brendel.

Accordingly, claim 21 is patentable over Polizzi and Guenthner in view of Brendel.

Claims 21 and 22 recite similar subject matter with respect to claim 20, and claims 8 and

15, on which claims 21 and 22 depend, respectively, recite "a subsequent request for the data

source." Accordingly, claims 21 and 22 are patentable over Polizzi and Guenthner in view of

Brendel.

VII.   CONCLUSION

In view of all the foregoing, Applicant respectfully submits that claims 1, 8 and 15, and

the claims that depend therefrom, are not rendered unpatentable by the prior art. Accordingly,

Applicant submits that all of the claims are in condition for immediate allowance and

respectfully requests withdraw of the finality of the rejections and that the application be passed

to issuance.

Unless a check is submitted herewith for the fee required under 37 C.F.R. §41.37(a) and

1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue

Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any

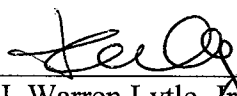overpayments to said Deposit Account.

Respectfully submitted,

SUGHRUE MION, PLLC   #51,361
Telephone: (202) 293-7060   J. Warren Lytle, Jr.
Facsimile: (202) 293-7860   Registration No. 39,283

WASHINGTON DC SUGHRUE/142133

46159
CUSTOMER NUMBER

Date: June 11, 2007

16

CLAIMS APPENDIX

CLAIMS 1-22 ON APPEAL:

1. (rejected) A method for automatically re-establishing a connection to a data source

accessible by a plurality of remote applications, the method comprising:

    providing at least one interface module configured to interface with a remote application;

    providing at least one port module configured to interface between the interface module

and the data source;

    providing a connection manager to facilitate the interface between the interface module

and the port module;

    detecting unavailability of the data source in response to an initial request for the data

source by the remote application;

    dynamically detecting availability of the data source in response to a subsequent request

for the data source; and

    re-connecting the data source to the remote application in response to the subsequent

request.

2. (rejected) The method of claim 1, wherein the detecting unavailability is executed by

the port module.

3. (rejected) The method of claim 1, wherein the detecting unavailability is executed by the connection manager.

4. (rejected) The method of claim 1, wherein the dynamically detecting is executed by the port module.

5. (rejected) The method of claim 1, wherein the dynamically detecting is executed by the connection manager.

6. (rejected) The method of claim 1, wherein re-connecting further comprises re-establishing a connection between the port module and the data source independently from initialization of the connection manager.

7. (rejected) The method of claim 1, wherein re-connecting further comprises re-establishing a connection between the port module and the data source without re-initializing the connection manager.

8. (rejected) A computer readable medium having stored thereon computer executable instructions for performing a method for connecting a plurality of remote applications with a data source, the method comprising:

providing at least one interface module configured to interface with a remote application;

providing at least one port module to interface between the interface module and the data source;

providing a connection manager to facilitate the interface between the interface module and the port module;

detecting unavailability of the data source in response to an initial request for the data source by the remote application;

dynamically detecting availability of the data source in response to a subsequent request for the data source; and

re-connecting the data source to the remote application in response to the subsequent request.

9. (rejected) The computer readable medium of claim 8, wherein the detecting unavailability is executed by the port module.

10. (rejected) The computer readable medium of claim 8, wherein the detecting unavailability is executed by the connection manager.

11. (rejected) The computer readable medium of claim 8, wherein the dynamically detecting is executed by the port module.

12. (rejected) The computer readable medium of claim 8, wherein the dynamically detecting is executed by the connection manager.

13. (rejected) The computer readable medium of claim 8, wherein re-connecting further comprises re-establishing a connection between the port module and the data source independently from initialization of the connection manager.

14. (rejected) The computer readable medium of claim 8, wherein re-connecting further comprises re-establishing a connection between the port module and the data source without re-initializing the connection manager.

15. (rejected) A system for connecting a plurality of remote applications with a data source, the system comprising:

an interface module configured to interface with a remote application;

a port module configured to interface between the interface module and the data source; and

a connection manager module configured to facilitate an interface between the interface module and the port module, wherein:

one of the port module and the connection manager module are further configured to

detect unavailability of the data source in response to an initial request for the data source by the

remote application, to dynamically detect availability of the data source in response to a

subsequent request for the data source, and to re-connect the data source to the remote

application in response to the subsequent request.

16. (rejected) The system of claim 15, wherein the port module is configured to execute

at least one of the dynamically detecting and re-connecting steps.

17. (rejected) The system of claim 15, wherein the connection manager module is

configured to execute at least one of the dynamically detecting and re-connecting steps.

18. (rejected) The system of claim 15, wherein re-connecting further comprises re-

establishing a connection between the port module and the data source independently from

initialization of the connection manager.

19. (rejected) The system of claim 15, wherein re-connecting further comprises re-

establishing a connection between the port module and the data source without re-initializing the

connection manager.

20. (rejected) The method of claim 1, further comprising connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications.

21. (rejected) The computer readable medium of claim 8, further comprising connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications.

22. (rejected) The system of claim 15, wherein the interface module and the port module are configured to be directly connected for communicating independently from the connection manager in subsequent communications.

EVIDENCE APPENDIX

Appellant submits, pursuant to 37 C.F.R. § 41.37(c)(1)(ix), that no evidence submitted

pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or any other evidence, other than the prior art

references of record, have been relied upon by Appellant in the appeal.

RELATED PROCEEDINGS APPENDIX

No related appeals or interferences before the Board are identified in Section II.

Accordingly, no copies of decisions rendered by a court or the Board in any proceeding

identified in Section II pursuant to 37 C.F.R. § 41.37(c)(1)(ii) are submitted herewith.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Lynh NGUYEN

Appln. No.: 09/750,475

Confirmation No.: 7832

Filed: December 28, 2000

For: DATA SOURCE INTERFACE ENHANCED ERROR RECOVERY

Docket No: ST9-99-134US3/A8644

Group Art Unit: 2152

Examiner: Dohm CHANKONG

SUBMISSION OF APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. The statutory fee of $500.00 is being charged to Deposit Account No. 19-4880 via EFS Payment Screen. The USPTO is also directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.
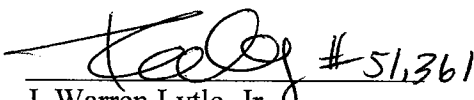
Respectfully submitted,

J. Warren Lytle, Jr.
Registration No. 39,283

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON DC SUGHRUE/142133

46159
CUSTOMER NUMBER

Date: July 11, 2007